IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

People of the State of Michigan
Plaintiff-Appellee,

SC: 153828
COA: 324018
LC: 14-000152-FC

-v-

Theodore Paul Wafer

Defendant-Appellant

_____/

AMICUS BRIEF OF AARON CYARS*

*Aaron Cyars authored this brief in whole. No other parties made any financial contribution for its preparation. MCR 7.312(H)(4)

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This Court has authority to allow filing of this brief pursuant to MCR 7.312(H)1.

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MCL 750.329

MCL 767.71

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Cases:

Apprendi v New Jersey 530 U.S. 466 (2000)

Attorney General v Diamond Mortg. 414 Mich 603 (1982)

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STATEMENT OF QUESTIONS PRESENTED

QUESTION 1
IS IT CORRECT THAT:
THE COURT MUST CORRECT JURISDICTIONAL DEFECTS NOT RAISED BY THE PARTIES?

AMICUS ANSWERS: YES
THE PROSECUTOR ANSWERS: HAS NOT ANSWERED

QUESTION 2
IS IT CORRECT THAT:
TRIAL AND CONVICTION FOR MANSLAUGHTER AND SECOND DEGREE MURDER, FOR ONE DEATH, VIOLATES DOUBLE JEPOARDY AS STATED BELOW?

2(A) MCL 750.329 IS A FORM OF COMMON LAW MANSLAUGHTER, INCLUDED IN SECOND DEGREE MURDER, BECAUSE THEIR ACTUS REUS ELEMENTS ARE THE SAME

2(B) MCL 767.71, RECOGNIZES ALL FORMS OF MANSLAUGHTER AS BEING ENCOMPASSED BY ONE COMMON LAW DEFINITION; THIS INCLUDES THE LEGISLATIVE REFERENCE TO MANSLAUGHTER, AS FOUND IN MCL 750.329. THEREFORE, BY OPERATION OF MCL 767.71, MANSLAUGHTER, UNDER MCL 750.329, IS A LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER

AMICUS ANSWERS: YES
THE PROSECUTOR ANSWERS: HAS NOT ANSWERED

QUESTION 3
IS IT CORRECT THAT:
THE FOURTEENTH AMENDMENT PRIVILEGES AND IMMUNITIES CLAUSE, IS A JURISDICTIONAL BAR TO APPLICATION OF PEOPLE V SMITH, WHICH MUST BE OVERRULED BECAUSE ITS APPLICATION:

3(A). ALLOWS SIMULTANEOUS CONVICTION FOR SECOND DEGREE MURDER AND ITS LESSER INCLUDED OFFENSE OF MANSLAUGHTER STRIPPING DOUBLE JEOPARDY PROTECTIONS;

3(B). VIOLATES THE RIGHT TO TRIAL BY JURY BY PREVENTING A GENERAL VERDICT

3(C). VITIATES THE REASONABLE DOUBT STANDARD BY ALLOWING CONVICTION FOR SECOND DEGREE MURDER, EVEN IF THE JURY SPECIFICALLY FOUND THAT THE ESSENTIAL ELEMENT OF MALICE DID NOT EXIST, BY ALSO CONVICTING FOR MANSLAUGHTER

AMICUS ANSWERS: YES
THE PROSECUTOR ANSWERS: HAS NOT ANSWERED

STATEMENT OF FACTS

This brief adopts and incorporates by reference the facts related by the Court of Appeals at *People v Wafer* 2016 Mich App LEXIS 666 (2016)

SUMMARY OF ARGUMENTS

In *People v Smith* 478 Mich 64, (2007), the Court held that manslaughter under MCL 750.329 was not a form of common law manslaughter, and therefore, not a lesser included offense of second degree murder. *Smith* did not mention MCL 767.71 in arriving at its conclusion.

MCL 767.71 makes all forms of manslaughter a single offense, under a single statute. Thus, all forms of manslaughter are included in second degree murder. *Smith* was wrong because it did not account for MCL 767.71

Application of Smith requires murder and manslaughter under MCL 750.329 to be treated as separate offenses, charged under separate counts, requiring separate verdicts.

This treatment causes the following defects, all of which are structural:

1). Double jeopardy: Since the offenses were treated as separate offenses, jeopardy protection was not extended at all. The constitution only extends such protection when the offenses at issue are the same.

2). General verdict: Since the offenses were treated as separate offenses, the right to a general verdict was not extended at all. The constitution only extends such privilege when the offenses consist of a principal offense and its lesser included offenses. Wafer's jury never had the power to issue a general verdict of acquittal or conviction because the lesser included offense was charged as a separate count requiring a separate verdict.

3). Reasonable doubt: Application of Smith allows conviction for murder and manslaughter for a

single death. It is impossible to simultaneously prove murder and manslaughter for one death, because murder must be malicious and manslaughter must not be malicious. A single act cannot be malicious and free from malice at the same time. It is impossible to prove the impossible beyond a reasonable doubt, or to any other degree. Therefore, the reasonable doubt standard could not and did not attach to the charges.

The jury was allowed to find that malice was impossible to prove, by convicting on manslaughter, while also convicting for murder. Therefore, the jury was allowed to convict defendant of murder while simultaneously finding that one of its elements (malice) was not proveable beyond a reasonable doubt. Assuming arguendo, that the instructions explaining reasonable doubt were perfect, they were rendered meaningless by Smith's allowance of the independent verdicts.

With each claim argued herein, the right was not simply violated, it was completely withheld. This violated the Privileges and Immunities Clause, which is jurisdictional in nature because it limits the power of the State. The provision is violated by application of *Smith,* because *Smith* allows the state to conduct trials: (1) without extending double jeopardy protection to a singular offense; (2) where the jury has no power to issue a general verdict of acquittal, and; (3) where the reasonable doubt standard is rendered inoperable because it is impossible to carry.

ISSUE I
THE COURT MUST CORRECT JURISDICTIONAL DEFECTS NOT RAISED BY THE PARTIES

The jurisdictional and structural nature of the claims means that they must be considered even if they have not been raised by the parties. "[I]n limited circumstances where justice so required", the Court will consider issues overlooked by the parties, and raised for the first time in an amicus brief. *Paramount Pictures Corp. v Miskinis* 418 Mich 708, 731 (1984). One such limited circumstance is where there exists a jurisdictional defect. Sua sponte, the Court "must raise and decide jurisdictional questions that the parties either overlook or elect not to press.". *Henderson v Shinseki* 562 us 428, 434 (2011). As argued infra, Privileges and

Immunities violations are jurisdictional.

ISSUE II
TRIAL AND CONVICTION FOR MANSLAUGHTER AND SECOND DEGREE MURDER, FOR ONE DEATH, VIOLATES DOUBLE JEPOARDY AS STATED BELOW:
2(A) MCL 750.329 IS A FORM OF COMMON LAW MANSLAUGHTER, INCLUDED IN SECOND DEGREE MURDER, BECAUSE THEIR ACTUS REUS ELEMENTS ARE THE SAME
2(B) MCL 767.71, RECOGNIZES ALL FORMS OF MANSLAUGHTER AS BEING ENCOMPASSED BY ONE COMMON LAW DEFINITION; THIS INCLUDES THE LEGISLATIVE REFERENCE TO MANSLAUGHTER, AS FOUND IN MCL 750.329. THEREFORE, BY OPERATION OF MCL 767.71, MANSLAUGHTER, UNDER MCL 750.329, IS A LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER

ISSUE 2(A)

After double jeopardy protections were withheld, Defendant Wafer was convicted of second degree murder and manslaughter for the death of a single victim. This aberrant result stems from the decision in *People v Smith* 478 Mich 64, 66 (2007), where the Court concluded that manslaughter under MCL 750.329, and common law manslaughter were separate crimes, by stating:

"Thus, just as statutory involuntary manslaughter is not included in the offense of second degree murder, it is not included in the offense of common-law involuntary manslaughter. We reject Defendants and the concurrence's argument that statutory involuntary manslaughter is merely but one form of common law involuntary manslaughter." *Smith* at, 72.

The Court further held: "Justice Markman's discussion of the relationship between statutory and common law manslaughter is thoughtful but is irrelevant to our analysis." *Smith* at 73 fn3. This precipitous separation of MCL 750.329, from common law manslaughter, was then used as a premise to hold: "Statutory involuntary manslaughter is not an inferior offense of second degree murder under MCL 768.32(1) because it contains elements ... that are not subsumed in the elements of second degree murder." *Id. Smith* was wrong for two reasons:

1) The actus reus element of MCL 750.329 is a subset of the actus reus of common law manslaughter. Therefore, MCL 750.329 is a lesser included of second degree murder. Under an abstract elements analysis, it is simply a form of common law manslaughter.

2) MCL 767.71 defines all manslaughter, as a single common law offense, with a single actus

reus, codified and incorporated, by a single unambiguous statute, thus, no judicial construction is permitted. In the face of MCL 767.71, an abstract elements test was improper. "[T]he Blockburger rule is not controlling when the the legislative intent is clear". *Garrett v U.S.* 471 U.S. 773, 779 (1985).

Standard of Review

Questions of statutory interpretation are reviewed de novo. *Garrett,* supra.

MCL 750.329 AND COMMON LAW MANSLAUGHTER SHARE A SINGLE ACTUS REUS

1). ACTUS REUS- "The actus reus is the wrongful deed that compromises the physical components of a crime". *People v Likine* 492 Mich 367, 393 fn. 43 (2012)

2). MENS REA: "Among the most common definitions of mens rea is criminal intent." *Apprendi v New Jersey* 530 U.S. 466, 492 fn.17 (2000).

The nexus between murder and manslaughter may be "illustrated by viewing the legally significant mental states as lying on a continuum: criminal intention anchors one end of the spectrum and negligence anchors the other." *People v Datema,* 448 Mich 585, 604 (1995). The continuum is composed of murder, manslaughter, and justifiable homicide:

COMMON LAW MURDER

"Murder is where a person of sound memory and discretion unlawfully kills any reasonable creature in being, in the peace of the state, with malice prepense or aforethought, either express or implied." *People v Potter,* 5 Mich 1, 6 (1858).

ACTUS REUS OF MURDER

The actus reus, of murder, is "the wrongful deed that compromises the physical components of" common law murder. *Likine* supra. *Potters* definition mentions a single, sweeping, physical component-- "where a person... kills any reasonable creature". *Id*. The means and manner by which the killing was done are irrelevant. The actus reus for "Murder under our statute embraces every offense which would have been murder at common law, and it

embraces no other crime." *People v Scott,* 6 Mich 287, 292-293 (1859).

The mens rea, for murder, is "malice prepense or aforethought", which couples with the actus reus to form proximate cause. "Thus, malice aforethought is the "grand criterion" which elevates a homicide, which may be innocent or criminal to murder" *People v Aaron* 409 mich 672, 714 (1980). Without malice, "the killing would be only manslaughter, if criminal at all." *Potter* supra, at 9.

COMMON LAW MANSLAUGHTER

"Voluntary manslaughter includes all homicides whether intentional or unintentional which are committed ... under circumstances of recognized mitigation." *Datema* at 594.

ACTUS REUS OF MANSLAUGHTER

The actus reus is "the wrongful deed that compromises the physical components of" common law manslaughter. Likine supra. This single, broad based, physical component "includes all homicides whether intentional or unintentional". Datema at 594. Just like murder, it does not matter how the killing was accomplished.

STATUTORY MANSLAUGHTER

MCL 750.329, provides:

"Any person who shall wound, maim or injure any other person by the discharge of any firearm pointed or aimed intentionally but without malice, at any such person, shall, if death ensue from such wounding, maiming or injury, be deemed guilty of the crime of manslaughter."

ACTUS REUS OF STATUTORY MANSLAUGHTER

The actus reus, or physical component of *MCL* 750.329, is made up of "discharge of any firearm pointed or aimed intentionally ... if death ensue[s]". Basically, any shooting death.

ACTUS REUS ELEMENTS OF COMMON LAW MANSLAUGHTER, AND STATUTORY MANSLAUGHTER

As noted, engaging in statutory construction was improper, because courts may only apply an abstract elements test if "the legislative intent is not clear". *People v Miller* 498 Mich 13, 19 (2015). *MCL* 767.71 is clear, but the *Smith* Court applied an abstract elements test any way, and arrived at an erroneous conclusion.

The actus reus element of statutory manslaughter is narrow, it consists of homicides by "discharge of any firearm ... if death ensue[s]". *MCL* 759.329.

The actus reus element of common law manslaughter is broader, and consists of "all homicides whether intentional or unintentional." Datema. The terms of *MCL* 750.329 are completely subsumed by common law manslaughter, because the common law contemplates "all homicides" including the shooting deaths which comprise *MCL* 750.329.

Thus, under an abstract elements test, *MCL* 750.329 is just a subset of common law manslaughter. This conclusion was observed by *People v Doss* 406 Mich 90 (1979), where the defendant was charged with manslaughter under *MCL* 750.329. *Id.* 93. The Court noted that "In the instant case ... malice aforethought is that quality which distinguishes murder from manslaughter[.]" *Id*. at 99.

Recognizing this common law principle, in a prosecution under *MCL* 750.329, signals that *MCL* 750.329 is just a form of common law manslaughter. "[I]n manslaughter, any unlawful and felonious killing constitutes the offense." *Evans v People*, 12 Mich 27, 33 (1863). The terms of *MCL* 750.329 are sufficient, but not necessary, conditions for common law manslaughter.

Smith was wrongly decided. The common law manslaughter rule applies to *MCL* 750.329: "MANSLAUGHTER IS A NECESSARILY LESSER INCLUDED OFFENSE OF MURDER".

People v Mendoza, 468 Mich 527, 540 (2003).

PURPOSE OF MCL 750.329

The Legislature had no intention to supplant common law manslaughter with *MCL* 750.329. The first incarnation of the statute was passed in 1869, and was entitled "An act to prevent the reckless use of firearms". *People v Stubenvoll*, 62 Mich 329, 331 (1886). The provision referenced manslaughter to signal that when reckless use of a firearm is intentionally directed toward human life, an ensuing death will not be regulated as a misdemeanor firearms violation; it will be regulated as a violation of the homicide laws. "When a person assaults another with the specific intent to injure, and death is caused, the person should be held responsible for some level of homicide." *Datema,* at 603. Thus, reading *MCL* 750.329 as a form of common law manslaughter does not render it redundant. Without it, death from reckless use of an intentionally aimed firearm would be transient; sometimes a misdemeanor firearms offense, sometimes a felony homicide offense.

ISSUE 2(B):
MCL 767.71, RECOGNIZES ALL FORMS OF MANSLAUGHTER AS BEING ENCOMPASSED BY ONE COMMON LAW DEFINITION; THIS INCLUDES THE LEGISLATIVE REFERENCE TO MANSLAUGHTER, AS FOUND IN MCL 750.329. THEREFORE, BY OPERATION OF MCL 767.71, MANSLAUGHTER, UNDER MCL 750.329, IS A FORM OF COMMON LAW MANSLAUGHTER AND A LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER

The shared identity of MCL 750.329, and common law manslaughter, has been codified. The open manslaughter statute makes all manslaughter a single offense, under a single statute:

"In all indictments for murder and manslaughter it shall not be necessary to set forth the manner in which nor the means by which the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the defendant did murder the deceased; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did kill the deceased." MCL 767.71.

The terms of this statute identify the actus reus element "in any indictment for manslaughter" as "the defendant did kill the deceased." Id. Although Wafer was charged under MCL 750.329, all of the manslaughter statutes must be read in pari materia. "Under the doctrine of in pari materia statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." *People v Feeley* 499 Mich 429, 443 (2016)

"In any indictment for manslaughter", including an indictment under MCL 750.329, prosecutors have a choice. They can use the specific statute, or they can freely interchange it with the general common law statute, and under either choice, will still be charging the same offense; because, under MCL 767.71, all manslaughter is rooted in the same common law ground. "There is but one offense of manslaughter in this State." *People v Rogulski* 181 Mich 481, 494 (1914).

While the scope of the statute spans "all indictments for ... manslaughter", it does not define manslaughter. "In construing a statute wherein a public offense has been declared in the general terms of the common law, without more particular definition, the courts generally refer to the common law for particular acts constituting the offense." *People v Schmitt* 275 Mich

575, 577 (1936).

In keeping with this principle, it has been acknowledged that MCL 767.71 "... simply codifies the common law." *People v Johnson* 427 Mich 98, 112 fn. 12 (1986). Through MCL 767.71, the legislature has intentionally bound "all indictments for ... manslaughter" to the common law definition-- including manslaughter under MCL 750.329.

> "[L]awmaking bodies are presumed to know of and legislate in harmony with existing laws, and the language of every enactment is... to be construed consistent with other laws which it does not in plain and unequivocal terms modify or repeal." *People v Harrison* 194 Mich 363, 369 (1916).

No plain and unequivocal legislative terms sunder MCL 750.329 away from the common law continuum. To the contrary, MCL 767.71 recognizes no distinction between the actus reus element of common law manslaughter, and so called 'statutory manslaughter'. MCL 750.329 embraces shooting deaths, while common law manslaughter embraces every killing of a human being, including shooting deaths. Therefore, any indictment for manslaughter, under MCL 750.329, is simply a subset of common law manslaughter under MCL 767.71. The Supreme Court has already held as much: "The statute [MCL 750.329] has nowhere attempted to define the crime of manslaughter, but has left the offense as known at the common law". *People v Stubenvoll* 62 Mich 329, 331 (1886).

Michigan has a unified open manslaughter statute, which declares that the actus reus element is the same in "any indictment for manslaughter". Additionally, the Legislature has declined to define manslaughter, leaving the definition to common law. These facts evince a clear legislative intent to rely on the common law to define "any indictment for manslaughter". Therefore, MCL 750.329, is just a form of common law manslaughter. The specific actus reus of MCL 750.329 is just another way of saying "that the defendant did kill the deceased." MCL 767.71.

A contrary conclusion would judicially rewrite MCL 767.71, to read "[almost] any indictment for manslaughter" instead of the text, which states "any indictment for manslaughter". "Congress

is clearly free to fashion exceptions to the rule it chose to enact[]. A court, just as clearly, is not." *Whalen v U.S.* 445 U.S. 684, 695 (1980). "In other words, because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute." *Reed v Yackell* 473 Mich 520, 529 (2005).

When MCL 767.71 declared an intent to include "any indictment for manslaughter," it unavoidably aggregated MCL 750.329 and common law manslaughter as a single offense, chargeable under a single statute. As such, the common law rule that manslaughter is a lesser included offense of second degree murder applies to MCL 750.329. See *People v Mendoza* 468 Mich 527, 540 (2003).

ISSUE III
THE FOURTEENTH AMENDMENT PRIVILEGES AND IMMUNITIES CLAUSE, IS A JURISDICTIONAL BAR TO APPLICATION OF PEOPLE V SMITH, WHICH MUST BE OVERRULED BECAUSE ITS APPLICATION:
3(A). ALLOWS SIMULTANEOUS CONVICTION FOR SECOND DEGREE MURDER AND ITS LESSER INCLUDED OFFENSE OF MANSLAUGHTER STRIPPING DOUBLE JEOPARDY PROTECTIONS;
3(B). VIOLATES THE RIGHT TO TRIAL BY JURY BY PREVENTING A GENERAL VERDICT
3(C). VITIATES THE REASONABLE DOUBT STANDARD BY ALLOWING CONVICTION FOR SECOND DEGREE MURDER, EVEN IF THE JURY SPECIFICALLY FOUND THAT THE ESSENTIAL ELEMENT OF MALICE DID NOT EXIST, BY ALSO CONVICTING FOR MANSLAUGHTER

ISSUE 3(A)

JEOPARDY PROTECTIONS

As noted above, manslaughter under MCL 750.329 and common law manslaughter, under 767.71, are the same thing because the Legislature has grouped them as a single offense under a single statute. The clear legislative intent, of MCL 767.71, should end the question. "Judicial construction is neither necessary nor permitted" where legislative intent is clear. *People v Schaefer* 473 Mich 418, 430 (2005).

But, *People v Smith* 478 Mich 64, 66 (2007), engaged in an abstract elements test anyway, and arrived at a conclusion at odds with MCL 767.71. This contradiction is based on a foundational error. The *Smith* Court did not factor MCL 767.71 into its decision. The statute is not referenced a single time, and the subject which it governs --the link between all forms of manslaughter-- was called irrelevant. With this foundational mistake clouding the way, the Court engaged in statutory construction, when none was actually allowed. *Smith* should be overruled. The standard of review is de novo. *Kimble v Marvel* 576 U.S. 446, 455 (2015).

OVERRULING SMITH/STARE DECISIS

"Respecting stare decisis means sticking to some wrong decisions... Indeed, stare decisis has consequences only to the extent that it sustains incorrect decisions; correct decisions have no

need for that principle to prop them up." *Kimble* at 455. But, a wrongly decided case should be overruled when "the decision defies practical workability". *In Re Ferranti* 504 Mich 1, 25 (2019). Application of *Smith* abridges constitutional privileges and immunities. The jurisdictional power to do so is denied by the Fourteenth Amendment. Since jurisdiction to apply Smith is denied, by the federal Privileges and Immunities Clause, *Smith* defies not only practical workability, but any workability at all.

MEANING OF JURISDICTION

At its root, "Jurisdiction is the power to declare the law". *Steel Co v Citizens for a Better Env't* 523 U.S. 83, 94 (1998). Even if a provision "does not use the word "jurisdiction," this Court does not require jurisdictional statutes to incant magic words." *Patchak v Zinke* 138 S.Ct. 897, 905 (2018). Instead, a provision is jurisdictional when "... it governs a courts adjudicatory capacity, that is its subject matter or personal jurisdiction." *Henderson v Shinseki,* 562 us 428, 435 (2011). Thus, "Jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties." *Reed Elsevier Inc v Muchnick* 559 U.S. 154, 160 (2009).

Const. Art. VI, sec. 13, states, in relevant part: "The circuit court shall have original jurisdiction in all matters not prohibited by law". *Id.* Accordingly, "We must presume that the circuit courts of our State have jurisdiction", or the power to declare law, unless some constitutional, or statutory, rule strips jurisdiction away. *Attorney General v Diamond Mortg. Co* 414 Mich 603, 619 (1982)

THE PRIVILEGES AND IMMUNITIES CLAUSE IS A JURISDICTION STRIPPING PROVISION

"Statutes that strip jurisdiction change the law for the purposes of Article III." *Patchak* supra, 906. *Patchak* found a statute governing certain claims to be jurisdiction stripping where, "Before the Gun Lake Act, federal courts had jurisdiction to hear these actions []. Now they do not." *Id.* 905.

In the present case the impacted law is Const. Art. VI, sec. 13, because its general grant of jurisdiction is limited by the Privileges and Immunities Clause, which states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states". U.S. Const. Amend. 14. Before this Clause was enacted:

> "[T]he State, at least until then, might give, modify or withhold the privilege at its will. The Fourteenth Amendment withdrew from the States powers theretofore enjoyed by them to an extent not yet fully ascertained, or rather to speak more accurately, limited those powers and restrained their exercise." *Twining v N.J.* 211 U.S. 78, 92 (1908).

Thus, operation of the Privileges and Immunities Clause is jurisdictional because "it diminishes the authority of the State". *Twining,* 92. This jurisdictional restraint also acts upon "The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws". *Twining* supra, at 90-91. Kimble supra, explains why this is so: "All our interpretive decisions, in whatever way reasoned, effectively become a part of the statutory scheme, subject (just like the rest) to Congressional change." *Id.* 456. Therefore, application of Smith supra is also subject to the limitations of the Privileges and Immunities Clause.

The jurisdictional nature of the Clause is significant because, sua sponte, the Court "must raise and decide jurisdictional questions that the parties either overlook or elect not to press." *Henderson v Shinseki* 562 us 428, 434 (2011). "[A]ll courts must upon challenge, or even sua sponte, confirm that subject matter jurisdiction exists". *Reed v Yackell* 473 Mich 520, 541 (2005).

PRIVILEGES AND IMMUNITIES DEFINED

"This Court has never undertaken to give any exact or comprehensive definition of the words "privileges and immunities". *Blake v McClung* 172 U.S. 239, 248 (1898). Yet, in *Benton v Maryland* 395 U.S. 784, 795 (1969), the Court gave specific guidance on how to determine if a privilege was applied against the States: "Once it is decided that a particular Bill of Rights guarantee is fundamental to the American scheme of justice, the same constitutional standards apply against both State and Federal Governments."

IMMUNITY FROM DOUBLE JEOPARDY IS A PROTECTED PRIVILEGE

In *Benton* supra, the Court held:

"The fundamental nature of the guarantee against double jeopardy can hardly be doubted. **** Like the right to trial by jury, it is clearly fundamental to the American scheme of justice." *Id.* 795-796. By the guidance issued in Benton, double jeopardy protection is a privilege or immunity which the states may not abridge, by "modifying or withholding" it. *Twining* at 92.

JEOPARDY DEFINED

"The prohibition is not against being twice punished, but against being twice put in jeopardy; and the accused, whether acquitted or convicted is equally put in jeopardy". *U.S. v Ball* 163 U.S. 662, 669 (1896). The Clause "is cast in terms of the risk or hazard of trial and conviction, not the ultimate legal consequences of the verdict." *Price v Georgia* 398 U.S. 323, 331 (1970). "[T]he risk to which the term jeopardy refers is that traditionally associated with actions intended to authorize criminal punishment". *Breed v Jones* 421 U.S. 519, 529 (1975). "Without risk of determination of guilt, jeopardy does not attach". *Serfass v U.S.* 420 U.S. 377, 392 (1975). "[T]he critical element for the purposes of jeopardy is the defendants exposure to such a choice being given to the fact finder." *People v Garcia* 448 Mich 442, 451 (1995). Thus, "a person has been in jeopardy when he is regularly charged with a crime". *Kepner v U.S.* 195 U.S. 100, 128 (1904).

SINGLE PROCEEDING DOUBLE JEOPARDY PROHIBITIONS

"[T]here has never been any doubt of [the] entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense." *Ex Parte Lange* 85 U.S. 163, 168 (1873). "It would seem apparent that if the state cannot constitutionally obtain two convictions for the same act at two separate trials, it cannot do so at the same trial." *People v Martin* 398 Mich 303, 310 (1978). These single-trial

safeguards are compelled, because "until joinder became permissible and commonplace, [] multiple punishment could result only from multiple trials." *Id.* at 310. (1978).

In the context of a single trial, double jeopardy protection is "entire and complete". *Lange* supra. And, "where the double jeopardy clause is applicable, its sweep is absolute." *Burks v U.S.* 437 U.S. 1, 11 (1978). This means that "the Constitutional provision must be applied to all cases where a second punishment is attempted for the same offence". *Lange* at 173. Otherwise, as noted by *Lange,* when a single offense yields two verdicts: "Is not its intent and its spirit in such a case as much violated as if a new trial had been had, and on a second conviction a second punishment inflicted? The argument seems to us irresistible[.]" *Id.*

When multiple offenses are charged in a single trial, jeopardy attaches to every offense individually, and terminates as each verdict is rendered. "[W]here the several counts of an indictment are for separate and distinct offenses, the verdict is necessarily several in its nature and the finding as to one offense constitutes the basis of a separate judgment." *People v Peck* 147 Mich 84, 90 (1907). Therefore, "It is of no moment that jeopardy continued on the [] charges, for which the jury remained empaneled ... jeopardy may terminate on some counts even as it continues on others." *Smith v Massachusetts* 543 us 462, 469 fn.3 (2005).

When more than one verdict is proposed for a single offense, "a constitutional immunity of the defendant [is] violated by the second ... judgment." *In Re Nielsen* 131 U.S. 176, 184 (1889). After the first judgment, a court "has no authority to render judgment against the defendant." *Id.* The extent to which authority is lacking was explained emphatically by *Lange* supra:

> "We are of the opinion that when the prisoner, as in this case, by reason of a valid judgment, had fully suffered one of the alternative punishments to which alone the law subjected him, the power of the court to punish him further was gone. **** The power was exhausted; its further exercise was prohibited. It was error, but it was error because the power to render any further judgment did not exist. It is no answer to this to say that the court had jurisdiction of the person of the prisoner, and of the offence under the statute." *Id.* 176.

Thus, verdicts are the dividing line between jeopardy and termination of jeopardy. "[T]he

double jeopardy clause by its terms applies only if there has been some event such as an acquittal, which terminates the original jeopardy." *Richardson v U.S.* 468 U.S. 317, 325 (1984). Where a criminal charge has been adjudicated "... that adjudication, whether it takes the form of an acquittal or conviction, is final as to the matter so adjudicated". *U.S. v Oppenheimer* 242 U.S. 85, 88 (1916).

These safeguards are applied in single trials to ensure that a single offense will only yield a single verdict, especially when one offense is divided into more than one count. "The double jeopardy clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units." *Brown v Ohio* 432 U.S. 161, 169 (1977).

A specific safeguard, in this area, is the recognition that a "greater offense is [] by definition the same as any lesser offenses included in it." *Brown* at 167. This "single offense" may only yield a single verdict because "where two statutory provisions proscribe the same offense, a legislature does not intend to impose two punishments for that offense." *Rutledge v U.S.* 517 U.S. 292, 297 (1996).

Michigan executes full scale adoption of Lange and its progeny. "[I]f the jury finds guilt of the greater, the defendant may not also be convicted separately of the lesser included offense." *People v Martin* 398 Mich 303, 309 (1978).

To eliminate all possibility that a court will exceed its jurisdiction, by allowing multiple verdicts for a single offense, *People v Jankowski* 408 Mich 79, 91 (1980), details how to proceed when a single offense is fragmentally charged as multiple counts. The jury must:

> "deal with the several counts in essentially the same fashion as it would address a single count having lesser included offenses. The jury should be instructed that it may convict of no more than one count. *** If, having proceeded in that fashion, the jury finds all of the elements of one of the offenses charged proved beyond a reasonable doubt, it should terminate its deliberations and announce its guilty verdict as to the single charge it finds proved, returning no verdict whatever as to the remaining charges... [Otherwise] it should return a single verdict of not guilty." id. 93-94.

This prescription is jurisdictional, because after the offense is initially adjudicated by one verdict, "the power of the court to punish [] further was gone". *Lange* supra.

APPLICATION TO THE PRESENT CASE

The initial violation is a Privileges and Immunities violation. This is true because *People v Smith* supra deemed "that statutory involuntary manslaughter under MCL 750.329 is not a necessarily included lesser offense of second degree murder." *Id.* 71. This statement designated MCL 750.329 as being completely distinct from second degree murder. I.e., a totally different offense. "If the same conduct violates two (or more) laws then each offense may be prosecuted separately." *Gamble v U.S.* 139 S.Ct. 1960, 1965 (2019). "Election between counts cannot be required on the ground that distinct offenses are charged ... no election is necessary for defendants protection." *People v Grabiec* 210 Mich 559, 562-563 (1920). Thus, where separate and distinct offenses are alleged, the double jeopardy clause extends no protection at all. The manner in which they are prosecuted "is a matter of policy and is simply not a Constitutional concern". *People v Nutt* 496 Mich 565, 595 fn. 31 (2004).

Therefore, when defendant Wafer was tried on both crimes, double jeopardy protection was not extended. The Court labored under the *Smith* rule, allowing it to proceed as if it were trying completely independent crimes. All of the violations that happened, are presently sanctioned by State law, every time MCL 750.329 is invoked. Application of *Smith* goes beyond violation of an internal process which is due. It's application gives the Court extra power to impose two verdicts for one offense. *Smith* systemically abridges double jeopardy rights by completely withholding them, as if separate offenses were being tried. This power is prohibited by the Privileges and Immunities Clause.

The fact that application of *Smith* violates the Privileges and Immunities Clause is significant because such violations are jurisdictional. Thus, rules designed to allow courts to decline judicial review, are obviated. Instead, sua sponte, the Court "must raise and decide

jurisdictional questions that the parties either overlook or elect not to press." *Henderson v Shinseki* 562 U.S. 428, 434 (2011). *Smiths* application has caused a cascading of structural defects which must be addressed by the Court.

MECHANICS OF PRESENT DOUBLE JEOPARDY CLAIM

Application of the complex legal principles involved is manifest simplicity. MCL 750.329 is a form of common law manslaughter. Common law manslaughter is a lesser included offense of second degree murder. *People v Mendoza* 468 Mich 527, 540 (2003). The prosecutor split second degree murder and manslaughter into two counts, and successfully sought guilty verdicts on both. Two verdicts for a single offense is a basic double jeopardy violation. "[I]f the jury finds guilt of the greater, the defendant may not also be convicted separately of the lesser included offense." *Martin* supra, 309. Therefore, Wafer is entitled to relief.

Generally, when a court exceeds its jurisdiction, regarding jeopardy restrictions, "We can correct this error by affirming the conviction on either count and vacating the conviction on the other. Usually we affirm the conviction on the higher charge and vacate the conviction on the lower charge". *Martin* supra at 313. This remedy is not a matter of arbitrary line drawing. When a court exceeds its authority, "its action, to the extent of such excess is void." *In re Bonner* 151 U.S. 242, 257 (1894). Accordingly, a defendant "is only entitled to relief from that unlawful feature, *** the original court would only set aside that which it had no authority to do". *Id.* 260.

But, *Bonner* recognizes that the remedy to cure excess of jurisdiction is inadequate "where there are also errors on the trial of the case affecting the judgment." *Id.* This principle was applied in *Milanovich v U.S*. 365 U.S. 551, 556 (1961). *Milanovich* reversed the entire case because failure to properly instruct the jury led to two verdicts for one crime. The Court held "there is no way of knowing whether a properly instructed jury would have found the wife guilty ... But for a reviewing court to make those assumptions is to usurp the functions of both

the jury and the sentencing judge." *Id.*

In the present case, vacating the manslaughter conviction would actually inflict further injury to Defendants double jeopardy rights. The conviction for the lesser included offense of manslaughter represents acquittal on the greater offense of second degree murder. The "Court has consistently refused to rule that jeopardy for an offense continues after an acquittal is express or implied by a conviction on a lesser included offense". *Price v Georgia* 398 U.S. 323, 329 (1970). This Court is faced with two separate verdicts for the "same offense". The jury only had the power to give one verdict. See *Jankowski* supra. Since two verdicts were rendered for one offense, one verdict must be voided as an excess of jurisdiction. See *In re Bonner* supra, and *Martin* supra. "A void verdict is as if the jury returned no verdict at all." *People v Young* 20 Mich App 211, 216 (1969).

One of the two verdicts is void and one of them is an acquittal. "A verdict of acquittal cannot be set aside." *People v Heikkala* 226 Mich 332, 336 (1924). This is true even if acquittal takes the form of a guilty verdict for a lesser offense. "The Double Jeopardy Clause also accords nonappealable finality to a verdict of guilty entered by a judge or jury". *U.S. v Martin Linen Supply Co*. 430 U.S. 564, 570 fn. 6 (1977). "A mistaken acquittal is an acquittal nonetheless, and we have long held that a verdict of acquittal ... could not be reviewed, on error or otherwise". *Evans v Michigan* 568 U.S. 313, 318 (2013). Whether the government may force waiver of an acquittal was succinctly settled a long time ago: "This it cannot do." *Benton* supra at 797. "An acquittal is never recast or disturbed, no matter what error might have produced it." *People v Wilson* 496 Mich 91, 106 (2014). Defendant may appeal his jeopardy claim without surrendering his acquittal, even if it was "based upon an egregiously erroneous foundation". *Martin Linen* supra, at 571.

"The law should not, and in our judgment, does not, place the defendant in such an incredible dilemma. Conditioning an appeal of one offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy." *Green v U.S.* 355 U.S. 184, 193-194 (1957).

Therefore, the Court must set aside the second degree murder charge to correct the double

jeopardy defect; while leaving intact the lesser included manslaughter verdict, because it represents acquittal for the greater offense.

Finally, this case is distinguishable from those with inconsistent verdicts. In such cases, there are two offenses and two logically irreconcilable jury verdicts. If there are two different offenses, there is no "right to return inconsistent verdicts, [yet] the jury does have the power to do so." *People v Garcia* 531 N.W.2d 683, 693 fn. 29 (1995). Since the power existed to give two judgments, "respect for the jury's verdict counseled giving each verdict full effect". *Yeager v U.S.* 557 U.S. 110, 124 (2009). But, with a single offense, there is no power to give two verdicts, and Lange prohibitions apply. One verdict is void. "If that [verdict] which were rendered were void ... it follows that the jury were discharged without rendering any verdict." *People v Allen* 262 Mich 553, 556 (1930). So, legally, there is no second verdict to respect.

Yeager noted, "hung counts have never been accorded respect as a matter of law or history". Id. The same is true of void verdicts. Historically, *Elliot v People* 13 Mich 365, 367 (1865), governed verdicts rendered in excess of a courts jurisdiction. Elliot allowed no modification to correct void judgments. The case had to be reversed and the prisoner simply discharged. Id. This was true until courts began to "reject the monstrous doctrine" of allowing the guilty to escape punishment altogether over a sentencing error. *Bonner* supra, at 260. Now the judgment is only voided for the excess.

In the present case, there is only one homicide. The defendant stands convicted of two homicides. One of the verdicts must be vacated, because it is void and no verdict at all, and one of them cannot be reviewed, without placing defendant twice in jeopardy, because it represents an acquittal.

ISSUE 3(B-C)

THROUGH APPLICATION OF SMITH, THE STATE VIOLATED DEFENDANTS RIGHT TO TRIAL BY JURY BY WITHHOLDING THE RIGHTS TO A GENERAL VERDICT AND BY ALLOWING CONVICTION EVEN WHERE IT WAS IMPOSSIBLE TO SATISFY THE REASONABLE DOUBT STANDARD

JURY TRIAL RIGHT

The Sixth Amendment provides, inter alia, that "the accused shall enjoy the right to a speedy and public trial by an impartial jury". Id. This right is protected against state interference, by the Fourteenth Amendment which ensures that "a general grant of jury trial for serious offenses is a fundamental right". *Duncan v Louisiana* 391 U.S. 145, 157-158 (1968).

Though the Amendment "says nothing else about what a trial by an impartial jury entails ... The text and structure of the Constitution clearly suggest that the term "trial by an impartial jury" carried with it some meaning about the content and requirements of a jury trial." *Ramos v Louisiana* 140 S.Ct 1390, 1395 (2020). "If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conducted it prohibits or requires". *Id.* 1406 fn. 63. Thus, two of those requirements are:

1). The right to a general verdict, and;

2). The reasonable doubt standard.

ISSUE 3(B)

THE GENERAL VERDICT VIOLATION

"Juries at the time of the framing could not be forced to produce mere factual findings, but were entitled to deliver a general verdict pronouncing the defendants guilt or innocence." *U.S. v Gaudin* 515 U.S. 506, 513 (1995). A general verdict reflects the unilateral "power of juries to decide on the law as well as on the facts in all criminal cases." *Id.* A defendants right to such a duly empowered jury is "... a sacred part of our legal privileges *** a general

verdict ex necessitate, disposes of the case in hand, both as to law and fact." *Id.* 513-514.

Michigan employed this standard before federal incorporation of the jury trial right was recognized:

"As it is one of the most essential features of the right of trial by jury at common law, that no jury should be compelled to find any but a general verdict in criminal cases, [] removal of this saf eguard would violate its design and destroy its spirit". *People v Marion* 29 Mich 31, 40 (1874).

To preserve the integrity of the design and spirit of the right to trial by jury, the general verdict requirement is typically enforced in two ways:

First, when multiple counts are used to charge a single offense, in different ways, "a general verdict cannot be reversed [] if any one of the counts is good and warrants the judgment." *Griffin v U.S.* 502 U.S. 46, 49 (1991). When there is but a single offense, a single general verdict on any one of the counts is final as to the offense in its entirety. Even if the offense has been divided among several counts, a "judgment on a general verdict of guilty upon that count will be a bar to any further prosecution in respect of any of the matters embraced by it." *Crain v U.S.* 162 U.S. 625, 636 (1896). see also *People v Jankowski* 408 Mich 79, 91 (1980).

The same rule applies where there is "a general jury verdict under a single count charging the commission of an offense by two or more means. *Griffin* at, 50. And, it imbues acquittals, as well as convictions, with finality. E.g., *Sanabria v U.S.* 437 U.S. 54 (1978). *Sanabria* enforced a general verdict of acquittal based on only one of several alternative theories of guilt, "since only a single offense was involved and petitioner went to judgment on that offense.*** While the numbers evidence was erroneously excluded, the judgment of acquittal produced thereby is final and unreviewable." *Id.* 76-77

Second, the general verdict requirement also applies in the context of a single count embracing greater and lesser included offenses. This "essential feature of the right to trial by jury", is

enforced by clearly providing "the jury with the opportunity to return a general verdict of not guilty." *People v Wade* 283 Mich App 462, 468 (2009). This "opportunity" means that they must be given the option to render a single acquittal which disposes of "the whole charge, [] as well as of any less offence included therein." *U.S. v Ball* 163 U.S. 662, 670 (1896). If the option to exercise this power is absent, the actual verdict rendered is meaningless. The right to trial by jury has been denied.

APPLICATION TO THE PRESENT CASE

As argued above, MCL 767.71 aggregates all forms of manslaughter as a single offense, under a single statute. Therefore, manslaughter under MCL 750.329 is a lesser included offense of second degree murder.

Defendant was charged with second degree murder in count one and manslaughter in count two. Thus, greater and lesser offenses, were divided into multiple counts. At trial the jury was compelled to find two specific verdicts-- a verdict for second degree murder, which in no way applied to the manslaughter charge, and a verdict for manslaughter. The jury never had the power to issue a single general verdict of conviction or acquittal, on the greater offense, disposing of "the whole charge, [] as well as of any less offence included therein." *Ball* supra.

It is beyond question that the verdict on count one did not generally apply to the lesser offense charged in count two. A second verdict was required and, in fact, rendered on the lesser included offense.

In *Wade* supra, this principle was applied to a verdict form that provided a not guilty option, only for the principal charge. The option did not appear to apply to the lesser included offenses. *Id.* 465. The *Wade* Court noted in dictum that the verdict form could have been cured of its defect by the addition of a not guilty option for each of the lesser included offenses. *Id.* at 468.

Amicus submits that despite superficial appeal, this solution is unavailing. The right to a general verdict means that a verdict on the principal charge generally disposes of all lesser included offenses, in kind. See *Ball* supra.

The "cure" noted by *Wade,* does not achieve this result. Unlike a general verdict, it does not entail the same verdict for the lesser offense, as the one given on the greater offense. Acquittal of the greater offense would not generally apply to the lesser included offenses, because the lesser offenses would still need verdicts, which could end up being convictions. This possibility obviously circumvents the right to a general verdict of acquittal. Giving the jury power to render a bunch of specific verdicts, seriatim, is not the same thing as the right to a single general verdict. It is the exact opposite.

In the present case, the jury had a guilty option, and a not guilty option, for count one. The same options were provided for count two. But these options were count specific because application of *Smith* required the offenses to be viewed as separate. "[W]here the several counts of an indictment are for separate and distinct offenses, the verdict is necessarily several in its nature and the finding as to one offense constitutes the basis of a separate judgment."

People v Peck 147 Mich 84, 90 (1907).

A potential verdict of acquittal, on the greater offense, must apply to all of the lesser included offenses as a single judgment, or else it is not general. The fact that no acquittal actually issued is irrelevant. The Sixth Amendment confers every jury with power to issue one general verdict, disposing of a "whole charge" and any lesser included offense. The body assembled to take away Wafers freedom did not have this power. Therefore, it was not a Sixth Amendment jury. Wafers entire right to trial by jury was vitiated by his jury not having all the powers a jury must have-- the right to issue a general verdict across an entire spectrum of charges.

ISSUE 3(C)

DEFENDANT'S RIGHT TO TRIAL BY JURY WAS DENIED WHEN APPLICATION OF PEOPLE V SMITH INFRA VITIATED THE REASONABLE DOUBT STANDARD BY ALLOWING CONVICTION FOR SECOND DEGREE MURDER, EVEN IF THE JURY SPECIFICALLY FOUND THAT THE ESSENTIAL ELEMENT OF MALICE DID NOT EXIST, BY ALSO CONVICTING FOR MANSLAUGHTER

When multiple charges come from one transaction, they are judicially classified in one of two ways: (1) as the "same offense," or (2) as independent, distinct offenses. *People v Miller* 498 Mich 13, 19 (2015). Any "separate and distinct offenses may be charged as separate counts". *People v Tobey* 401 Mich 141, 148 (1977). With separate offenses "each substantive... statute operates independently of the other." *Ball v U.S.* 470 U.S. 856, 860 (1985). Consequently, each "separate criminal offense [is] punishable in addition to, and not as a substitute for, the predicate offense." *Garrett v U.S.* 471 U.S. 773, 779 (1985).

People v Smith 478 Mich 64, 72 (2007), held: "statutory involuntary manslaughter is not included in the offense of second degree murder." *Id.* Therefore, under *Smith,* the crimes are independent, and both may be proven at the same time. Smith makes manslaughter "punishable in addition to, and not as a substitute for," murder. *Garrett* supra, at 779.

Once independent offenses are charged, the reasonable doubt burden that attends each offense is beyond controversy. "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship* 397 U.S. 358, 365 (1970).

A "fact necessary to constitute the crime" of murder is that it must be malicious. A "fact necessary to constitute the crime" of manslaughter is that it must not be malicious. Application of *Smith* allows simultaneous conviction for both murder and manslaughter for a single death. This confounding result raises the question of: How can you be required to carry a reasonable doubt burden to prove both conditions at the same time? The simple answer is: You can't. "[I]t is manifestly impossible for an act to be at the same time malicious and free from

malice." *People v Chappell* 27 Mich 486, 487 (1873), (overruled on other grounds). By corollary, "it is manifestly impossible for an act to be at the same time" murder and manslaughter. Yet, under *Smith,* a single killing may defy reality, and be murder and manslaughter at the same time. This means that *Smith* allows a jury to convict of murder, even though their manslaughter verdict is a finding that the essential element of malice is impossible to prove beyond a reasonable doubt. The court "may not enter judgment when the jury has found that one of the offense's elements, albeit a negative element, has not and cannot be met." *People v Mckewen* 326 Mich App 342, 357 (2018). The legal doctrine of impossibility is instructive if not directly applicable. "[T]he law does not compel parties to impossibilities". *People v Likine* 492 Mich 367, 395 fn. 50 (2012).

The Constitution compels "The government [to] prove beyond a reasonable doubt every element of a charged offense." *Victor v Nebraska* 511 U.S. 1, 5 (1994). When murder and manslaughter are simultaneously charged, such a compulsion is impossible. Thus, when Smith supra is applied, it is impossible for the reasonable doubt standard to attach, because it is impossible for every element of both offenses to be proved at the same time. Therefore, the reasonable doubt burden cannot force or compel the prosecutor to do the impossible. Any conviction under these circumstances is unconstitutional.

This claim makes no instructional complaint. It does not matter what the jury was told about reasonable doubt. Assuming, arguendo, that the instructions were perfect, application of Smith rendered them meaningless. Even if reasonable doubt was correctly explained, the jury still had to render simultaneous verdicts, and it is never possible for the reasonable doubt standard to simultaneously attach to conviction for both offenses.

Since it is impossible to prove murder and manslaughter for an single act, it was also impossible to hold the prosecutor to the reasonable doubt standard at defendants trial. Accordingly, defendant was denied his right to trial by jury because the reasonable doubt standard could not and did not apply, simultaneously to both offenses, yet he stands convicted for both. Application of *Smith* supra, lifted the prosecutors burden in violation of the Privileges and

Immunities Clause. The defect is jurisdictional; this violation is also a structural defect requiring automatic reversal. "Denial of the right to a jury verdict of guilt beyond a reasonable doubt ... unquestionably qualifies as structural error." *Sullivan v Louisiana* 508 U.S. 275, 281-282 (1993).

Failure to hold the prosecution to the reasonable doubt "burden of proof [] vitiates all the jury's findings." *Sullivan* supra at 281. Reversal on all charges must issue.

RELIEF REQUESTED

WHEREFORE, Amicus requests that this Court reverse defendants convictions and remand for new trial on the manslaughter charges.

I declare that the foregoing is accurate to the best of my knowledge.

/s/Aaron Cyars 236911
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